

HOUSE BILL No. 1441

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-28-4-18; IC 36-7.

Synopsis: Numerous changes to planning and zoning law. Eliminates review of zoning decisions by certiorari, and establishes a judicial review procedure. Provides procedures for vacation of a plat, including any recorded covenants. Prohibits, for two years after an unsuccessful vacation petition, a subsequent vacation proceeding regarding the same property and relief. Allows a plan commission to grant waivers from the subdivision control ordinance, and provides that a plan commission may allow or require a commitment to be made. Makes changes regarding: (1) qualifications of citizen members of plan commissions and boards of zoning appeals; (2) appointment of alternate members to all plan commissions (current law allows only an area plan commission to appoint alternate members); (3) disqualification of plan commission and board of zoning appeals members due to financial interest or bias; (4) publication of the zoning ordinance; and (5) commitments and conditions. Makes other changes to the planning and zoning law. Repeals superseded statutes concerning vacation of plats, commitments, and writ of certiorari.

Effective: July 1, 2009; January 1, 2010.

Pearson, Truitt

January 13, 2009, read first time and referred to Committee on Government and Regulatory Reform.

C
o
p
y



Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1441

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-28-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 18. (a) A flood plain zoning ordinance must designate:

- (1) the county auditor;
- (2) the county surveyor; or
- (3) the municipal clerk or clerk-treasurer;

as applicable, as the zoning administrator who issues improvement location permits within the jurisdiction of the commission and in conformance with the flood plain ordinance.

(b) A **final** decision of the zoning administrator may be **judicially** reviewed by certiorari procedure. A petition for certiorari must specify the grounds upon which the petition alleges the illegality of the zoning administrator's action. The petition must be filed in the circuit court of the county in which the land is located within thirty (30) days after the date of the decision. A change of venue from the county in which the property is located may not be granted in any cause arising under this chapter. **in the same manner and subject to the same limitations as**



C
o
p
y

a final decision of a board of zoning appeals under IC 36-7-4.

SECTION 2. IC 36-7-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) Section 2 of this chapter applies only to areas subject to the jurisdiction of no plan commission under this article.

(b) Sections 3 through 9 of this chapter apply only to:

(1) areas subject to the jurisdiction of an advisory plan commission under this article; and

(2) areas subject to the jurisdiction of no plan commission under this article.

(c) Sections 10, ~~11~~, 14, and 16 of this chapter apply to all areas of the state. ~~except that section 11 of this chapter applies only to areas subject to the jurisdiction of a plan commission under this article.~~

(d) Sections 12, 13, and 15 of this chapter apply to all areas of the state, except in a county having a consolidated city.

SECTION 3. IC 36-7-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 10. (a) The owners of land in a plat may vacate all or part of that plat **under:**

(1) this section; or

(2) IC 36-7-4-711.

(b) In a case in which all the owners of land in a plat are in agreement regarding a proposed vacation, the owners may file a written instrument to vacate all or part of that plat. All the owners of land in the plat must declare the plat or part of the plat to be vacated in ~~a the~~ written instrument. ~~and that~~ **The** instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

~~(b)~~ **(c)** Before offering the instrument for recording under this section, an owner must file a copy of the instrument in the county auditor's office and must submit the instrument vacating **all or part of** the plat for the approval of the plan commission that has jurisdiction over the platted area under IC 36-7-4 **or the plat committee acting on behalf of the plan commission.** If no plan commission has jurisdiction over the platted area under IC 36-7-4, the instrument must be submitted for the approval of:

(1) the county executive, in the case of land located in an unincorporated area; or

(2) the municipal works board, in the case of land located inside the corporate boundaries of a municipality.

The instrument may be approved under this section without notice or a hearing. The provisions of IC 36-7-4 concerning notice and hearing do not apply to the approval of an instrument under this section.

C
o
p
y



~~(c)~~ (d) The county recorder may record the instrument only if a certificate showing the approval of the vacation by the plan commission, county executive, or municipal works board is attached to it. If the instrument is not executed and approved as required by this section, it is void.

~~(d)~~ (e) The owners of land in a plat that is located outside the corporate boundaries of any municipality may vacate all of the plat without the approval required by subsections ~~(b)~~ (c) and ~~(c)~~ (d) if no lots have been sold and no roads constructed in the plat, and all of the owners of land in the plat declare the plat to be vacated in a written instrument. The instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

~~(e)~~ (f) An instrument recorded under this section terminates the effect of the plat or part of the plat declared to be vacated, and it also terminates all public rights in the public ways and public places described in the plat or part of the plat. However, a public way that has been improved, or that is part of an improved plat, may be vacated only in accordance with section 12 of this chapter or with IC 36-7-4-712, whichever is applicable.

SECTION 4. IC 36-7-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 13. A remonstrance or objection permitted by section ~~11~~ or 12 of this chapter may be filed or raised by any person aggrieved by the proposed vacation, but only on one (1) or more of the following grounds:

- (1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.
- (2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.
- (3) The vacation would hinder the public's access to a church, school, or other public building or place.
- (4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

SECTION 5. IC 36-7-4-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 203. (a) ADVISORY. After a metropolitan plan commission is established, it shall exercise exclusively the planning and zoning functions of the county and of the second class city, and the separate planning and zoning functions of the county plan commission and the city plan commission cease.

(b) AREA. After the planning department is established and the participating legislative bodies have adopted a zoning ordinance, the

C
o
p
y



1 planning department shall exercise exclusively the planning and zoning
 2 functions of the county and of the participating municipalities, except
 3 as provided in ~~section 918 of the area planning law~~. **section 901(i) of**
 4 **this chapter**. Where other statutes confer planning and zoning
 5 authority on a participating municipality or a county, their plan
 6 commissions shall continue to exercise that authority until such time
 7 as the planning department is established and the participating
 8 legislative bodies adopt a zoning ordinance.

9 SECTION 6. IC 36-7-4-204 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 204. AREA. After
 11 the planning department is established, other municipalities within the
 12 county may adopt ordinances adopting the area planning law and
 13 provide for the appointment of their representatives to the area plan
 14 commission. In such a case, the membership of the commission shall
 15 be increased according to the formula provided in sections 207, 208,
 16 209, and 211 of the area planning law, and the authority of a municipal
 17 plan commission and municipal board of zoning appeals ceases, except
 18 as provided in ~~section 918 of the area planning law~~, **section 901(i) of**
 19 **this chapter**, as of the time specified in that ordinance. The
 20 composition of any such municipal board of zoning appeals, or of any
 21 such board later organized, under the advisory planning law, must
 22 conform with that law, except that those members of such a board to be
 23 appointed from the municipal plan commission shall instead be
 24 appointed from the area plan commission.

25 SECTION 7. IC 36-7-4-208 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 208. (a)
 27 ADVISORY. The county plan commission consists of nine (9)
 28 members, as follows:

29 (1) One (1) member appointed by the county executive from its
 30 membership.

31 (2) One (1) member appointed by the county fiscal body from its
 32 membership.

33 (3) The county surveyor or the county surveyor's designee.

34 (4) The county agricultural extension educator. However, if the
 35 county does not have a county agricultural extension educator, the
 36 county extension board shall select a resident of the county who
 37 is a property owner with agricultural interest to serve on the
 38 commission under this subdivision for a period not to exceed one

39 (1) year.

40 (5) Five (5) members appointed in accordance with one (1) of the
 41 following:

42 (A) Four (4) citizen members, of whom no more than two (2)

C
o
p
y



may be of the same political party. Each of the four (4) members must be:

- (i) a resident of an unincorporated area of the county; or
- (ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However, at least two (2) of the citizen members must be residents of the unincorporated area of the county. Also one (1) township trustee, who must be a resident of an unincorporated area of the county appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:

- (i) a resident of an unincorporated area of the county; or
- (ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least two (2) members must be residents of the unincorporated area of the county.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the county legislative body from its membership.
- (2) One (1) member appointed by the second class city legislative body from its membership.
- (3) Three (3) citizen members who:
 - (A) reside in an unincorporated area of the county; or

C
o
p
y



(B) reside in the county and also own real property located in whole or in part in an unincorporated area of the county; of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county executive.

(6) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

C
o
p
y



(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

~~(e) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.~~

SECTION 8. IC 36-7-4-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 209. (a) AREA. When the number of representatives for a municipality is two (2), one (1) is a member of the municipal legislative body appointed by the legislative body and the other is a citizen member appointed by the municipal executive.

(b) AREA. When the number of representatives for a municipality is three (3), one (1) is a member of the legislative body appointed by the legislative body and two (2) are citizen members appointed by the executive.

(c) AREA. When the number of representatives for a municipality is four (4), one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and two (2) are citizen members appointed by the executive.

(d) AREA. When the number of representatives for a municipality is five (5) or more, one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and the remainder are citizen members appointed by the executive.

~~(e) AREA. The appointing authority may appoint an alternate member to participate on the commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.~~

SECTION 9. IC 36-7-4-216 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold:

(1) ~~other elective or appointive~~ **an elected office (as defined in**

C
o
p
y



IC 3-5-2-17); or

(2) any other appointed office in municipal, county, or state government;

except for membership on the board of zoning appeals as required by section 902 of this chapter and, in the case of an area plan commission, membership on the school board; the park board; or the board of directors for public utilities or board of trustees for utilities created under IC 8-1-11.1. body from which the member must be appointed under this series.

(c) Except as provided in section 208(a)(5) of this chapter, a citizen member must be a resident of the jurisdictional area of the plan commission.

SECTION 10. IC 36-7-4-220 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 220. (a) If a vacancy occurs among the plan commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member. **The appointing authority may also appoint an alternate member to participate with the commission in a hearing or decision if the regular member appointed by the appointing authority has a disqualification under section 223(c) of this chapter. An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.**

(b) If a vacancy occurs in the office of the county surveyor, **while the county surveyor is serving on the plan commission**, then the county engineer shall ~~be a member of~~ **participate with** the plan commission during the time the office of the county surveyor is vacant. **The county engineer has all the powers and duties of a regular member while participating under this subsection.**

(c) An appointed member who misses three (3) consecutive regular meetings of the ~~metropolitan development plan~~ **plan** commission ~~shall~~ **may** be treated as if the member had resigned, ~~unless at the discretion of~~ **the appointing authority reaffirms the member's appointment.**

SECTION 11. IC 36-7-4-223 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 223. (a) ~~As used in~~ This section, "zoning matter" does not ~~include~~ **apply to** the preparation or adoption of a comprehensive plan **under the 500 series of this chapter.**

(b) A member of a plan commission or a legislative body **is disqualified and** may not participate as a member of the plan commission or legislative body in a hearing or ~~decision~~ **recommendation** of that commission or body concerning a zoning

C
o
p
y



1 ~~matter legislative act under the 600 series, 1300 series, or 1500~~
 2 ~~series of this chapter~~ in which the member has a direct or indirect
 3 financial interest. The commission or body shall enter in its records the
 4 fact that its member has such a disqualification.

5 **(c) A member of a plan commission is disqualified and may not**
 6 **participate in a hearing of that commission concerning a zoning**
 7 **decision as described in section 1016 of this chapter if:**

8 **(1) the member is biased or prejudiced or otherwise unable to**
 9 **be impartial; or**

10 **(2) the member has a direct or indirect financial interest in**
 11 **the outcome of the zoning decision.**

12 **(d) The plan commission shall enter in the plan commission's**
 13 **records:**

14 **(1) the fact that a regular member has a disqualification**
 15 **under subsection (c); and**

16 **(2) the name of the alternate member, if any, who participates**
 17 **in the hearing in place of the regular member.**

18 ~~(e)~~ **(e)** A member of a plan commission or a legislative body may
 19 not directly or personally represent another person in a hearing before
 20 that commission or body concerning a zoning ~~matter.~~ **decision or a**
 21 **legislative act.**

22 ~~(f)~~ **(f)** A member of a plan commission may not receive any mileage
 23 or compensation under section 222.5 of this chapter for attendance at
 24 a meeting if the member is disqualified under ~~subsection (b) during any~~
 25 ~~part of this section from participating in the entire~~ meeting.

26 SECTION 12. IC 36-7-4-402 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 402. (a)
 28 ADVISORY. Each advisory plan commission shall prescribe the
 29 qualifications of, appoint, remove, and fix the compensation of the
 30 employees of the commission, which compensation must conform to
 31 salaries and compensations fixed before that time by the fiscal body of
 32 the county or municipality, as the case may be. ~~The commission shall~~
 33 ~~delegate authority to its employees to perform ministerial acts in all~~
 34 ~~cases except where final action of the commission is necessary.~~

35 (b) AREA. Each area plan commission shall prescribe the
 36 qualifications of, and with the consent of the executive director, fix the
 37 compensation of the employees of the planning department, which
 38 compensation must conform to salaries and compensations fixed before
 39 that time by the county fiscal body. ~~The commission shall delegate~~
 40 ~~authority to its employees to perform ministerial acts in all cases except~~
 41 ~~where final action of the commission or the board of zoning appeals is~~
 42 ~~required by the area planning law.~~

C
o
p
y



(c) ~~METRO. The metropolitan development plan~~ commission shall delegate authority to ~~employees of the department of metropolitan development the plan commission's staff~~ to perform all ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by ~~the metropolitan development~~ law.

(d) The plan commission may designate a hearing ~~examiner officer~~ or a committee of the commission to conduct any public hearing required to be held by the commission **or make any decision required to be made by the commission, or both.** Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire commission, and the ~~examiner hearing officer~~ or committee shall report findings of fact and recommendations for decision to the commission, ~~The commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations; and if any exception is filed in accordance with those rules, the commission shall hold the prescribed hearing. If no exception is filed, the commission shall~~ **or make the decision on behalf of the commission. A decision made under the authority of this subsection may not be a basis for judicial review, but it may be appealed to the plan commission. An interested person who wishes to appeal a decision made under the authority of this subsection must file the appeal not later than fourteen (14) days after the date the decision is made, and the plan commission shall then hold the prescribed hearing and** render its decision. ~~without further hearing.~~

(e) METRO. The metropolitan development commission may designate a historic preservation commission created under IC 36-7-11.1-3 to conduct the public hearing required to be held by the metropolitan development commission under the 600 series of this chapter relative to the territory included in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing must be held upon the same notice and under the same rules as a hearing before the metropolitan development commission. The historic preservation commission shall report to the metropolitan development commission the historic preservation commission's findings of fact and recommendations for decision. The metropolitan development commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations. If an exception is filed in accordance with the rules, the metropolitan development commission shall hold the prescribed hearing. If an exception is not filed, the metropolitan development commission shall render a decision without further hearing. However, this subsection does not eliminate the need for a historic preservation commission to

C
o
p
y



1 issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the
2 approval of a rezoning by the metropolitan development commission.

3 SECTION 13. IC 36-7-4-403.5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 403.5. (a)
5 ~~METRO~~. If authorized by a zoning ordinance, the plan commission
6 may designate a hearing ~~examiner~~ **officer** or committee of the
7 commission to conduct a combined hearing procedure relative to
8 developments that require more than one (1) hearing under this
9 chapter. In conducting the combined hearing procedure under this
10 section, the hearing ~~examiner~~ **officer** or committee of the commission
11 may exercise the following:

12 (1) Powers of the hearing ~~examiner~~ **officer** under section 402(d)
13 **of this chapter** in relation to the 600 series of this chapter.

14 (2) Powers of the plat committee under the 700 series of this
15 chapter.

16 (3) Powers of a board of zoning appeals under the 900 series of
17 this chapter.

18 (b) Decisions of the hearing ~~examiner~~ **officer** or committee of the
19 plan commission under the combined hearing procedure may be
20 excepted to or appealed as follows:

21 (1) Decisions under the authority of section 402(d) **of this**
22 **chapter** in relation to powers granted under the 600 series of this
23 chapter shall be ~~excepted to in the same manner as exceptions~~
24 ~~may be filed to appealed to the plan commission in the same~~
25 ~~manner as~~ decisions of the hearing ~~examiner~~ **officer** or
26 committee under section 402(d) **of this chapter may be**
27 **appealed.**

28 (2) Decisions under the authority of the 700 series of this chapter
29 shall be appealed to the plan commission in the same manner as
30 decisions of the plat committee may be appealed.

31 (3) Decisions under the authority of the 900 series of this chapter
32 shall be appealed to the plan commission, within ~~five (5)~~
33 **fourteen (14)** days after the decision is rendered and the plan
34 commission shall consider the petition in the same manner as the
35 petition would be considered by a board of zoning appeals.

36 (c) The plan commission shall make rules governing the hearing of
37 cases under the combined hearing procedure. The rules may not require
38 a petitioner or an applicant to use the combined hearing procedure
39 authorized under this section.

40 (d) **If authorized by a zoning ordinance, the plan commission**
41 **may adopt rules setting specific procedures to facilitate informal**
42 **settlement of matters. The rules may grant procedural rights to**

C
o
p
y



persons in addition to those conferred by this chapter, so long as the rights conferred upon other persons are not substantially prejudiced. This subsection does not require any person to settle a matter under the plan commission's informal procedures.

SECTION 14. IC 36-7-4-410 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 410. (a) ADVISORY. The legislative body of any municipality located in a county having an advisory plan commission may, by ordinance designate that county plan commission as the municipal plan commission. **Such an ordinance may also provide that the county board of zoning appeals has jurisdiction within the corporate boundaries of the municipality.** A county plan commission so designated has for that municipality all the powers and duties granted, under the advisory planning law, to a municipal plan commission. Any municipality designating a county plan commission as its municipal plan commission may contract annually to pay the county a proportionate part of the expenses that is properly chargeable to the planning service rendered that municipality. The county shall appropriate these payments to the county plan commission in addition to any sums budgeted for planning purposes.

(b) ADVISORY. Whenever a municipality designates a county plan commission as its municipal plan commission under subsection (a), residents of that municipality are eligible to be appointed citizen members of the commission under section 208(a)(5) of this chapter. **Whenever a county board of zoning appeals has jurisdiction within the corporate boundaries of a municipality, residents of that municipality are eligible to be appointed citizen members of the board of zoning appeals under section 902 of this chapter.**

SECTION 15. IC 36-7-4-610 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 610. (a) After adoption of a zoning ordinance under section 606 of this chapter, the plan commission shall publish a notice of adoption in accordance with IC 5-3-1. The notice of adoption (which the plan commission shall have prepared) must:

- (1) summarize the subject matter of the ordinance;
- (2) give the date of adoption;
- (3) specify the places or areas that would be directly affected by the ordinance (this subdivision does not require the identification of any real property by metes and bounds);
- (4) specify the penalty or forfeiture prescribed for a violation of the ordinance; and
- (5) give two (2) locations open to the public where the entire text

C
o
p
y



of the ordinance is available for inspection.

(b) After adoption of a zoning ordinance under section 606 or 607 of this chapter, the plan commission shall print the text of the ordinance in book or pamphlet form (or arrange for the inclusion of the zoning ordinance in the code of ordinances printed by the unit under IC 36-1-5), and no other printing or publication of any zoning ordinance is required. Printing of the text of a zoning ordinance in compliance with this subsection constitutes presumptive evidence:

(1) of the text of the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any);

(2) of the date of adoption of the ordinance, and of any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any); and

(3) that the ordinance, along with any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any), has been properly signed, attested, and recorded.

(c) Zone maps incorporated by reference into the zoning ordinance are not required to be printed in the code of ordinances, book, or pamphlet printed under this section, but the plan commission shall keep them available at its office for public inspection.

(d) Unless a zoning ordinance provides for a later effective date, the ordinance takes effect when it is adopted under section 606, 607, or 608 of this chapter, subject to subsection (e).

(e) When a provision prescribing a penalty or forfeiture for a violation is printed under this section, it may not take effect until fourteen (14) days after the later of the following:

(1) The final day on which notice of its adoption is published under subsection (a).

(2) The day on which it is filed in the clerk's office under subsection (f).

(f) ~~A If the zoning ordinance is not required to be included in the code of ordinances printed by a unit under IC 36-1-5: However, if the zoning ordinance is not included in that code, then:~~

(1) the book or pamphlet (and supplement, if any) that comprises the zoning ordinance shall be incorporated by reference into the code of ordinances;

(2) two (2) copies of the book or pamphlet (and supplement, if any) as printed under this section shall be filed in the office of the clerk of each participating legislative body, and these copies shall be kept on file in that office for public inspection as required by IC 36-1-5-4; and

C
o
p
y



(g) ~~If the zoning ordinance is not included in the code of ordinances,~~
 (3) the clerk shall keep additional copies of the book or pamphlet
 (and supplement, if any) in the **clerk's** office for the purpose of
 sale or distribution. ~~However,~~

(g) **If a unit includes the zoning ordinance is included in the unit's**
 code of ordinances **printed under IC 36-1-5, the plan commission**
shall also make copies of the zoning ordinance ~~shall also be made~~
 available to the public in accordance with IC 5-14-3.

(h) **This chapter does not prohibit a unit from adopting a unified**
development ordinance that combines the unit's zoning and
subdivision control ordinances into a single book, pamphlet, or
code title, article, or chapter.

SECTION 16. IC 36-7-4-702 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 702. (a) In
 determining whether to grant primary approval of a plat, the plan
 commission shall determine if the plat or subdivision qualifies for
 primary approval under the standards prescribed by the subdivision
 control ordinance.

(b) The subdivision control ordinance must specify the standards by
 which the commission determines whether a plat qualifies for primary
 approval. The ordinance must include standards for:

- (1) minimum width, depth, and area of lots in the subdivision;
- (2) public way widths, grades, curves, and the coordination of
 subdivision public ways with current and planned public ways;
 and
- (3) the extension of water, sewer, and other municipal services.

The ordinance may also include standards for the allocation of areas to
 be used as public ways, parks, schools, public and semipublic
 buildings, homes, businesses, and utilities, and any other standards
 related to the purposes of this chapter.

(c) The standards fixed in the subdivision control ordinance under
 subsection (b) may ~~not be lower than~~ **be waived at the sole discretion**
of the plan commission, so long as every approved plat meets all
the minimum standards prescribed in the zoning ordinance for a
similar use. As a condition of granting a waiver under this
subsection, the commission may allow or require a commitment to
be made under section 1015 of this chapter.

(d) As a condition of primary approval of a plat, the commission
 may specify:

- (1) the manner in which public ways shall be laid out, graded, and
 improved;
- (2) a provision for water, sewage, and other utility services;

C
o
p
y



- 1 (3) a provision for lot size, number, and location;
 2 (4) a provision for drainage design; and
 3 (5) a provision for other services as specified in the subdivision
 4 control ordinance.

5 (e) The subdivision control ordinance may not regulate
 6 condominiums regulated by IC 32-25.

7 SECTION 17. IC 36-7-4-707 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 707. (a) If, after
 9 the hearing, the plan commission or plat committee determines that the
 10 application and plat comply with the standards in the subdivision
 11 control ordinance, **it the plan commission or plat committee** shall
 12 make written findings and a decision granting primary approval to the
 13 plat. This decision, **which must also specify any condition imposed**
 14 **or waiver granted under section 702(c) of this chapter**, must be
 15 signed by an official designated in the subdivision control ordinance.

16 (b) If, after the hearing, the plan commission or plat committee
 17 disapproves the plat, **it the plan commission or plat committee** shall
 18 make written findings that set forth its reasons and a decision denying
 19 primary approval and shall provide the applicant with a copy. This
 20 decision must be signed by the official designated in the subdivision
 21 control ordinance.

22 (c) Primary approval or disapproval of a plat by the plat committee
 23 may be appealed only under section 708 of this chapter. However, **it**
 24 **the appeal** may not be taken directly to court for review under section
 25 1016 of this chapter until administrative remedies are exhausted.

26 (d) This section applies to any subdivision of land, whether or not
 27 it is exempted from the notice and hearing requirements of this series
 28 under section 701(d) of this chapter.

29 SECTION 18. IC 36-7-4-708 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 708. (a) An
 31 applicant or other interested party may appeal to the plan commission
 32 the primary approval or disapproval of a plat, or the imposition of a
 33 condition on primary approval by the plat committee. A notice of
 34 appeal must be filed with the commission within ~~ten (10)~~ **fourteen (14)**
 35 days after the action of the plat committee. However, if the plat
 36 committee grants primary approval for the subdivision of land without
 37 public notice and hearing under section 701(d) of this chapter, an
 38 interested party may appeal the approval to the plan commission by
 39 filing a notice of appeal with the plan commission not more than ~~ten~~
 40 **(10) fourteen (14)** days after a copy of the plat committee's action is
 41 mailed to the interested party. Notice shall be given and a hearing held
 42 by the commission in the same manner as in the case of the plat

C
o
p
y



committee.

(b) The commission has the same power as the committee to approve, disapprove, or impose conditions on the approval of plats.

(c) The primary approval by the commission of a plat must be certified on behalf of the commission by an official designated in the subdivision control ordinance.

(d) The primary approval or disapproval of a plat by the plan commission or the imposition of a condition on primary approval is a final decision of the plan commission that may be reviewed as provided by section 1016 of this chapter.

SECTION 19. IC 36-7-4-711 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 711. ~~ADVISORY AREA.~~ (a) The plan commission (or plat committee acting on its behalf), proceeding in accordance with ~~IC 36-7-3,~~ **IC 36-7-3-10 or with this section** has exclusive control over the vacation of plats or parts of plats.

(b) In a case in which not all the owners of land in a plat are in agreement regarding a proposed vacation, this section provides an alternate procedure under which one (1) or more owners of land in the plat may file with the plan commission a petition to vacate all the plat or only that part of the plat that pertains to land owned by the petitioner or petitioners. A petition under this section must:

- (1) state the reasons for and the circumstances prompting the request;**
- (2) specifically describe the property in the plat proposed to be vacated; and**
- (3) give the name and address of every other owner of land in the plat.**

(c) Subject to section 714(b) of this chapter, a petition under this section may also include a request to vacate any recorded covenants filed as a part of the plat.

(d) Not more than thirty (30) days after receipt of a petition under this section, the plan commission staff shall announce the date for the hearing before the plan commission (or plat committee acting on the plan commission's behalf). The plan commission shall adopt rules prescribing procedures for setting hearing dates and for providing other notice as may be required in accordance with this chapter. The petitioner shall pay all expenses of providing the notice required by this subsection.

(e) The plan commission shall adopt rules prescribing procedures for the conduct of the hearing, which must include a provision giving every other owner of land in the plat an

C
o
p
y



opportunity to comment on the petition.

(f) After hearing the petition, the plan commission or plat committee shall approve or disapprove the request. The plan commission or plat committee may approve the vacation of all or part of a plat only upon a determination that:

(1) conditions in the platted area have changed so as to defeat the original purpose of the plat;

(2) it is in the public interest to vacate all or part of the plat; and

(3) the value of that part of the land in the plat not owned by the petition will not be diminished by the vacation.

(g) The plan commission or plat committee may impose reasonable conditions as part of any approval. The plan commission or plat committee shall furnish a copy of the plan commission's or plat committee's decision to the county recorder for recording.

SECTION 20. IC 36-7-4-712 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 712. (a) METRO. The plat committee has exclusive control over the vacation of:

(1) plats or parts of plats; and

(2) public ways, easements, or public places, or parts of any of them, whether or not they are included in an approved plat;

in the county. The plat committee may adopt rules governing the procedure for these vacations. The vacation of public ways, easements, or public places, or parts of any of them may be made only upon a finding by the plat committee that the vacation is in the public interest. The plat committee may accomplish the vacation of plats or parts of plats by proceeding in accordance with IC 36-7-3-10 or ~~IC 36-7-3-11~~. Vacation or replatting may include the vacation or amendment of any recorded covenant running in favor of any governmental agency, or restriction, that was contained in the original plat: **section 711 of this chapter.**

~~(b) METRO:~~ An applicant or other interested party may appeal the approval or disapproval of a vacation in the manner prescribed by ~~section 708~~ of this chapter.

SECTION 21. IC 36-7-4-714 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 714. (a) The following are final decisions of the plan commission or plat committee that may be reviewed as provided by section 1016 of this chapter:**

(1) Approval or disapproval of the vacation of all or part of a plat.

C
o
p
y



(2) Imposition of a condition on approval of the vacation of all or part of a plat.

(b) The vacation of all or part of a plat may include the vacation of any recorded covenants filed with the plat, but only upon a determination that:

(1) the platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;

(2) the covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger; or

(3) the covenant vacation is needed to lessen or avoid congestion in the public ways.

SECTION 22. IC 36-7-4-715 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 715. After the termination of a vacation proceeding under this chapter, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two (2) years.**

SECTION 23. IC 36-7-4-903 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 903. ADVISORY.**

(a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of the advisory planning law, this chapter, either:

(1) an additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area and consist only of residents of the unincorporated area; or

(2) the municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter, one (1) of the ~~two (2)~~ **additional** citizen members who were appointed under section ~~214~~ **214(a), 1210(a), or 1210.5(c)(3)** of this chapter to the plan commission to represent the unincorporated area. The citizen member ~~must reside in the unincorporated area; The citizen~~ shall be appointed for a term of ~~four (4)~~ **two (2)** years. The citizen **member** is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning

C
o
p
y



appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

SECTION 24. IC 36-7-4-905 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 905. (a) None of the members of a board of zoning appeals may hold: ~~other elective or appointive~~

(1) **an elected office (as defined in IC 3-5-2-17); or**

(2) **any other appointed** office, except as permitted by section 902 of this chapter, in municipal, county, or state government.

(b) **Except as provided in section 208(a)(5) of this chapter,** a member **of the board of zoning appeals** must be a resident of the jurisdictional area of the board.

SECTION 25. IC 36-7-4-907 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter or is **otherwise** unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) ~~METRO~~: A member of the ~~metropolitan~~ board of zoning appeals who misses three (3) consecutive regular meetings of the board ~~shall~~ **may** be treated as if ~~he~~ **the member** had resigned **at the discretion of the appointing authority.**

(c) ~~METRO~~: Members serving in any division of the ~~metropolitan~~ board of zoning appeals ~~shall~~ **may** also serve as alternate members for the other divisions of the ~~metropolitan~~ board of zoning appeals. Whenever regular members serving in a particular division are unavailable **and no alternate members have been appointed under subsection (a), the chairman or vice chairman chairperson or vice chairperson** of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

SECTION 26. IC 36-7-4-909 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 909. (a) A member of a board of zoning appeals **is disqualified and** may not participate in a hearing or decision of that board concerning a zoning matter ~~in which he~~ **if the member:**

C
o
p
y



(1) is biased or prejudiced or otherwise unable to be impartial; or

(2) has a direct or indirect financial interest in the outcome of the hearing or the decision.

(b) The board shall enter in its the board's records:

(1) the fact that a regular member has such a disqualification; and

(2) the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

SECTION 27. IC 36-7-4-918.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 918.5. (a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. **The board may impose reasonable conditions as a part of the board's approval.** A variance may be approved under this section only upon a determination in writing that:

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

(b) Before approval of a proposal involving a structure regulated under IC 8-21-10 may become effective, the board of zoning appeals must have received:

(1) a copy of:

(A) the permit for the structure issued by the Indiana department of transportation; or

(B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and

(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

(c) Only the plan commission may grant a waiver from standards that are fixed in the subdivision control ordinance, as provided in section 702(c) of this chapter.

SECTION 28. IC 36-7-4-923 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 923. (a) This section allows the establishment of an alternate procedure ~~by the plan commission~~ under which there can be a more expedient disposition of

C
O
P
Y



certain matters **that otherwise would be heard by a board of zoning appeals**. When authorized by **ordinance or by rules of** the plan commission, a hearing officer has the power of a board of zoning appeals to approve or deny, through the alternate procedure allowed by this section:

(1) a variance from the development standards of the zoning ordinance in accordance with section 918.5 of this chapter; or
 (2) a special exception, special use, contingent use, or conditional use from the terms of the zoning ordinance in accordance with section 918.2 of this chapter; or

(3) a variance of use from the terms of the zoning ordinance in accordance with section 918.4 of this chapter. However, the authority of a hearing officer under this subdivision may be exercised only if:

(A) the area planning law is not applicable; and

(B) the variance of use would allow all of the following:

- (i) The expansion of a use currently existing on the tract.
- (ii) A use that is consistent with the comprehensive plan.

(b) All requirements for variances, exceptions, and uses imposed by the 900 series **of this chapter** apply to the alternate procedure, except to the extent that a provision of section 924 of this chapter imposes a different requirement.

(c) The alternate procedure does not apply in any excluded city as described in IC 36-3-1-7. Sections 919(f) and 922 of this chapter do not apply to the alternate procedure.

(d) The hearing officer (who may be a board member, a staff member, or any other person) shall be appointed by the plan commission. More than one (1) hearing officer may be appointed. A hearing officer may be removed from ~~his~~ **the officer's** responsibilities at any time by the plan commission.

(e) ~~METRO~~. The plan commission may adopt other rules **or recommend ordinances** for the alternate procedure not inconsistent with the 900 series ~~of the metropolitan development law~~. **this chapter**. These rules **or ordinances** may specify the period during which the staff may indicate whether the staff objects to the proposed variance, exception, or use. These rules **or ordinances** may also provide for public notice and due notice to interested parties in accordance with section 920(b), 920(c), and 920(d) of this chapter, but the rules **or ordinances** may, because of the nature of the petitions heard under the alternate procedure, provide for a less inclusive definition of "interested person" and provide for a quicker and less burdensome method of giving notice to interested persons than rules applicable to

C
o
p
y



petitions not filed under the alternate procedure.

(f) **METRO.** For purposes of subsection (d), the director of the department of metropolitan development shall nominate, and the plan commission shall appoint, all hearing officers. Such a hearing officer may be removed from ~~his~~ **the officer's** responsibilities at any time by either the director or the plan commission.

~~(f)~~ (g) **METRO.** The plan commission may, if requested by a historic preservation commission created under IC 36-7-11.1-3, appoint:

- (1) a member of the historic preservation commission;
- (2) a member of the historic preservation staff; or
- (3) a person who is an employee of the department of metropolitan development;

as a hearing officer to act in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing officer may be removed from the hearing officer's responsibilities at any time by either the historic preservation commission or the plan commission.

SECTION 29. IC 36-7-4-924 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 924. (a) In establishing the alternate procedure under section 923 of this chapter, the plan commission may adopt rules **or recommend ordinances:**

- (1) limiting the kinds of variance, special exception, special use, contingent use, or conditional use petitions or applications that may be filed under the alternate procedure;
- (2) permitting the hearing officer, in appropriate circumstances, to transfer a petition or an application filed under the alternate procedure to the board of zoning appeals;
- (3) requiring the creation of minutes and records of the proceedings before the hearing officer and the filing of the minutes and records as public records; and
- (4) regulating conflicts of interest and communication with the hearing officer, so as to require the same level of conduct as is required by the 900 series of this chapter.

(b) The staff (as defined by the zoning ordinance), if any, may file a written objection to a petition or an application for a variance, exception, or use if:

- (1) it would be injurious to the public health, safety, morals, and general welfare of the community; or
- (2) the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.

(c) If a written objection is filed under subsection (b), the petition or application shall:

C
o
p
y



(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(d) The staff (as defined by the zoning ordinance), if any, may indicate that it does not object to the approval of the variance, exception, or use if specified conditions are attached. If the petitioner or applicant does not accept these conditions, the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(e) The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in section ~~92+~~ **1015** of this chapter. If the petitioner or applicant for the variance, exception, or use does not accept these conditions or make the commitment, the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(f) The hearing officer may not modify or terminate any commitment, whether made under this section or section ~~92+~~ **1015** of this chapter. Commitments made under this section may be modified **or terminated only** by the board of zoning appeals.

(g) A decision of a hearing officer under the alternate procedure may not be a basis for judicial review, but it may be appealed to the board of zoning appeals. An interested person who wishes to appeal a decision of a hearing officer under the alternate procedure must file the appeal with:

(1) the board of zoning appeals if the board of zoning appeals consists of only one (1) division; or

(2) a division of the board of zoning appeals if the board of zoning appeals consists of more than one (1) division;

within fourteen (14) days after the decision is made.

SECTION 30. IC 36-7-4-1003 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1003. (a) Each decision of the legislative body under section 918.6 of this chapter ~~or the board of zoning appeals~~ is subject to **judicial** review by ~~certiorari~~. Each person aggrieved by a decision of the board of zoning appeals or the legislative body may file with the circuit or superior court of the county in which the premises affected are located, a verified petition setting forth that the decision is illegal in whole or in part and

C
o
p
y



specifying the grounds of the illegality. No change of venue from the county in which the premises affected are located may be had in any cause arising under this section: **in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under section 1016(a) of this chapter.**

(b) ~~ADVISORY~~. The person shall file the petition with the court within thirty (30) days after the date of that decision of the board of zoning appeals:

(c) ~~AREA~~. The person shall file the petition with the court within thirty (30) days after the date of that decision of the board of zoning appeals:

(d) ~~(b) METRO~~. **The person shall file the A petition for judicial review must be filed** with the court after the expiration of the period within which an official designated by the metropolitan development commission may file an appeal under section 922 of this chapter but **within thirty (30) days after the date of that decision of the board of zoning appeals: not later than the period provided for timely filing under section 1605 of this chapter.** However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to **judicial** review. ~~by certiorari, in accordance with this section.~~ The official or department of metropolitan development may not seek **judicial** review ~~by certiorari~~ of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 31. IC 36-7-4-1013 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1013. (a) ~~ADVISORY~~. When the legislative body provides penalties for failure to comply with any ordinance **adopted under this chapter**, the municipal attorney or an attorney representing the county, as the case may be, shall, on receipt of information of the violation of any ordinance, make an investigation of the alleged violation. If acts elicited by the investigation are sufficient to establish a reasonable belief that a violation has occurred on the part of the party investigated, the municipal attorney or an attorney representing the county may file a complaint against the person and prosecute the alleged violation **under IC 36-1-6.**

(b) ~~AREA—METRO~~. The plan commission or a board of zoning appeals may request the prosecuting attorney of the county ~~(or of the city under the metropolitan development law)~~ to take appropriate action in any case involving the violation of **this chapter** or of any ordinance or regulation adopted under it: **The prosecuting attorney shall act promptly when requested: this chapter.**

C
o
p
y



(c) ~~AREA~~. The plan commission may appoint one (1) or more attorneys to advise the planning ~~department staff~~ and to assist in the enforcement of ~~the area planning law, and any~~ ordinances and regulations adopted under it. ~~The this chapter. Subject to the 400 series of this chapter, an area plan~~ commission may employ one (1) attorney on a full-time basis so that the attorney can become fully informed on the specialized law of planning, zoning, and subdivision control.

(d) The services of ~~an attorney~~, attorneys appointed by the plan commission ~~under subsection (c)~~ shall be made available without extra compensation to the prosecuting attorney in all cases involving ~~the planning department. ordinances or regulations adopted under this chapter.~~ The attorneys may be deputized to act for and under the direction of the prosecuting attorney.

(e) In civil actions for the enforcement of ~~the area planning law or~~ ordinances or regulations adopted under it, ~~this chapter~~, an attorney appointed by the plan commission may bring an action in the name of the plan commission.

SECTION 32. IC 36-7-4-1014 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1014. (a) The plan commission, **board of zoning appeals**, or any enforcement official designated in the zoning ordinance may bring an action ~~in the circuit or superior court of the county under IC 36-1-6 to invoke any legal, equitable, or special remedy for the enforcement of this chapter or enforce~~ any ordinance adopted or action taken under this chapter.

(b) The plan commission, **board of zoning appeals**, or any enforcement official designated in the zoning ordinance may also bring an action ~~in the circuit or superior court of the county to enforce:~~

(1) conditions imposed **by the commission or board of zoning appeals** under this chapter; **or**

(2) covenants made in connection with a subdivision plat, a development plan, or a PUD district ordinance (as defined in section 1503 of this chapter). ~~or~~

~~(3) commitments made in accordance with this chapter.~~

(c) **ADVISORY**. In addition, in each county having a metropolitan plan commission, if the county or second class city adopts a zoning ordinance under this chapter, then that unit may also invoke any remedy under this section. However, the county may do so only outside the corporate boundaries of the city, and the city may do so only within its corporate boundaries.

(d) ~~METRO~~. The metropolitan development commission may also bring an action ~~in the circuit or superior court of the county to enforce:~~

C
o
p
y



- (1) conditions imposed under this chapter;
- (2) covenants made in connection with a subdivision plat; a development plan; or a PUD district ordinance (as defined in section 1503 of this chapter); or
- (3) commitments made in accordance with this chapter.

The metropolitan development plan commission, **board of zoning appeals, or designated enforcement official** may invoke any legal, equitable, or special remedy in ~~such an action~~ **described in subsection (a) or (b).**

(e) An action for the levy of a fine or penalty for enforcement of a zoning ordinance may be brought in any court located within the jurisdiction of the plan commission **or board of zoning appeals.**

(f) If the plan commission, **board of zoning appeals,** or designated enforcement official is successful in ~~the an action brought under this section,~~ the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

SECTION 33. IC 36-7-4-1015 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1015. (a) ~~ADVISORY—AREA. The board of zoning appeals or any enforcement official designated in the zoning ordinance may bring an action for injunction in the circuit or superior court of the county to restrain a person from violating this chapter or an ordinance adopted under this chapter. As a condition to the:~~

- (1) adoption of a rezoning proposal;
- (2) primary approval of a proposed subdivision plat or development plan; or
- (3) approval of an application for a:
 - (A) special exception;
 - (B) special use;
 - (C) contingent use;
 - (D) conditional use; or
 - (E) variance;

the owner of a parcel of real property may be required or allowed to make a commitment to the plan commission or board of zoning appeals, as applicable, concerning the use or development of that parcel.

(b) ~~ADVISORY—AREA.~~ The board of zoning appeals may also bring an action in the circuit or superior court of the county for a mandatory injunction; directing a person to remove a structure erected in violation of this chapter or of an ordinance adopted under this chapter. **Commitments are subject to the following provisions:**

- (1) A commitment must be in writing.

C
o
p
y



(2) Unless the written commitment is modified or terminated in accordance with this subsection, a written commitment is binding on:

- (A) the owner of the parcel;
- (B) a subsequent owner of the parcel; and
- (C) a person who acquires an interest in the parcel.

(3) A commitment shall be recorded in the office of the county recorder. However, a commitment is binding on the owner who makes the commitment even if the commitment is unrecorded. An unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.

(4) A commitment automatically terminates if the zone map applicable to the parcel to which the commitment relates is changed.

(5) Except for a commitment automatically terminated under subdivision (4), a commitment may be modified or terminated only by a decision of the plan commission or board of zoning appeals to which the commitment was made. The decision must be made at a public hearing after notice of the hearing has been provided under the rules of the plan commission or board of zoning appeals, as the case may be.

(6) During the time a rezoning proposal is being considered by the legislative body under the 600 or 1500 series of this chapter, the owner may make a new commitment to the plan commission or modify the terms of a commitment that was made when the proposal was being considered by the plan commission.

(7) No further action of the plan commission is required for a new commitment made under subdivision (6) to be effective.

(8) If a commitment is modified under subdivision (6):

- (A) no further action is required by the plan commission for the commitment to be effective if the effect of the modification is to make the commitment more stringent; or
- (B) the modified commitment must be ratified by the plan commission if the effect of the modification is to make the commitment less stringent.

(9) Requiring or allowing a commitment to be made does not obligate the plan commission, board of zoning appeals, or legislative body, as applicable, to adopt, approve, or favorably recommend the proposal or application to which the

**C
o
p
y**



commitment relates.

(c) ~~ADVISORY AREA.~~ If the board of zoning appeals is successful in its action, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action. **The plan commission or board of zoning appeals may adopt rules:**

- (1) governing the creation, form, recording, effectiveness, modification, and termination of commitments; and**
- (2) designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.**

(d) An action to enforce a commitment ~~made in accordance with this chapter~~ may be brought in the circuit or superior court of the county by:

- (1) the plan commission or board of zoning appeals to which the commitment was made;**
- ~~(1)~~ **(2) any person who was entitled to enforce a commitment under the rules of the plan commission or board of zoning appeals in force at the time the commitment was made; or**
- ~~(2)~~ **(3) any other specially affected person who was designated in the commitment.**

(e) A person bringing an action to enforce a commitment ~~made under this chapter~~ may request mandatory or prohibitory injunctive relief through the granting of a temporary restraining order, preliminary injunction, or permanent injunction. **If an action to enforce a commitment is successful, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.**

(f) In an action to enforce a commitment, it is not a defense that:

- (1) no consideration was given for the commitment;**
- (2) that the commitment does not benefit any designated parcel of property;**
- (3) that the document setting forth the commitment lacks a seal;**
- (4) that there is no privity of estate;**
- (5) that there is not privity of contract; or**
- (6) that there is no proof of damages.**

(g) **The following types of conditions, as authorized by this chapter, are not considered commitments and are not subject to subsection (b):**

- (1) A condition imposed upon primary approval of a plat that must be met before secondary approval of the plat may be granted under the 700 series of this chapter.**
- (2) A condition imposed upon the approval of an exception, a**

C
o
p
y



1 use, a variance, or a development plan that must be met
 2 before an improvement location permit may be issued under
 3 the 800 series of this chapter.

4 (3) A condition imposed upon an approval relative to any
 5 other development requirement that must be met before any
 6 other secondary approval may be granted or building permit
 7 may be issued under this chapter.

8 (h) Covenants, easements, equitable servitudes, and other land
 9 use restrictions created in accordance with law are not considered
 10 commitments and are not subject to the provisions of subsection
 11 (b).

12 SECTION 34. IC 36-7-4-1016 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1016. (a) Final
 14 decisions of the board of zoning appeals under:

15 (1) the 900 series of this chapter (administrative appeals,
 16 exceptions, uses, and variances); or

17 (2) section 1015 of this chapter (appeals of commitment
 18 modifications or terminations);

19 are considered zoning decisions for purposes of this chapter and
 20 are subject to judicial review in accordance with the 1600 series of
 21 this chapter.

22 (b) The following decisions of the plan commission may be
 23 reviewed by certiorari procedure are considered zoning decisions for
 24 purposes of this chapter and are subject to judicial review in the
 25 same manner as that provided for the appeal of a final decision of the
 26 board of zoning appeals under subsection (a):

27 (1) A final decision under the 700 series of this chapter
 28 (subdivision control).

29 (2) A final decision under ~~IC 36-7-3-11(h)~~ section 1015 of this
 30 chapter (appeal of a vacation decision): commitment
 31 modification or termination).

32 (3) A final decision under the 1400 series of this chapter
 33 (development plans).

34 (4) A final decision under the 1500 series of this chapter (planned
 35 unit development), when authority to make a final decision is
 36 delegated to the plan commission by the legislative body under
 37 section 1511 of this chapter.

38 (c) Final decisions of preservation commissions under
 39 IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3 (certificates
 40 of appropriateness) are considered zoning decisions for purposes
 41 of this chapter and are subject to judicial review in the same
 42 manner as that provided for the appeal of a final decision of the

C
o
p
y



board of zoning appeals under subsection (a).

(d) Final decisions of zoning administrators under IC 14-28-4-18 (improvement location permits within flood plain areas) are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under subsection (a).

(e) The following actions are legislative acts and are not considered zoning decisions for purposes of this chapter:

(1) Adopting or approving a comprehensive plan under the 500 series of this chapter.

(2) Certifying with or without a recommendation, a proposal under the 600 series of this chapter.

(3) Adopting, rejecting, or amending a zoning ordinance under the 600 series of this chapter.

(4) Adopting, rejecting, or amending an impact fee ordinance under the 1300 series of this chapter.

(5) Designating a zoning district where a development plan is required under the 1400 series of this chapter.

(6) Adopting, rejecting, or amending a PUD district ordinance under the 1500 series of this chapter.

(7) Adopting, rejecting, or amending a flood plain zoning ordinance under IC 14-28-4.

SECTION 35. IC 36-7-4-1020 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1020. (a) All ordinances adopted under this chapter are presumed to have been validly adopted.

(b) A ~~court~~ **plan commission** or a board of zoning appeals shall take ~~judicial~~ **official** notice of all ordinances adopted under this chapter.

SECTION 36. IC 36-7-4-1102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1102. ~~ADVISORY. The advisory planning law~~ **This chapter** is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other statutes and these powers remain in effect. Powers of supervision and regulation by these entities of state government over political subdivisions or persons also are not abrogated and continue in effect.

SECTION 37. IC 36-7-4-1335 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1335. (a) As used in this section, "improvement" means an improvement under section 1313(2) of this chapter or a site improvement, land, or real property

C
o
p
y



interest as follows:

(1) That is to be used for at least one (1) of the infrastructure purposes specified in section 1309 of this chapter.

(2) That is included in or intended to be used relative to an infrastructure type for which the unit has imposed an impact fee in the impact zone.

(3) That is not a type of improvement that is uniformly required by law or rule for the type of development on which the impact fee has been imposed.

(4) That is or will be:

(A) public property; or

(B) furnished or constructed under requirements of the unit and is or will be available for use by other development in the area.

(5) That is beneficial to existing development and future development in the impact zone and is not beneficial to only one (1) development.

(6) That either:

(A) allows the removal of a component of infrastructure planned for the impact zone;

(B) is a useful addition to the zone improvement plan; or

(C) is reasonably likely to be included in a future zone improvement plan for the impact zone.

(7) That is:

(A) constructed, furnished, or guaranteed by a bond or letter of credit under a request by an authorized official of the:

(i) applicable infrastructure agency; or

(ii) unit that imposed the impact fee; or

(B) required to be constructed or furnished under a written commitment that:

(i) is requested by an authorized official of the applicable infrastructure agency or the unit that imposed the impact fee;

(ii) concerns the use or developing of the development against which the impact fee is imposed; and

(iii) is made under section ~~613~~, ~~614~~, or ~~921~~ **1015** of this chapter.

(b) A fee payer is entitled to a credit against an impact fee if the owner or developer of the development constructs or provides:

(1) infrastructure that is an infrastructure type for which the unit imposed an impact fee in the impact zone; or

(2) an improvement.

C
O
P
Y



(c) A fee payer is entitled to a credit under this section for infrastructure or an improvement that:

(1) is constructed or furnished relative to a development after January 1, 1989; and

(2) meets the requirements of this section.

(d) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. However, if an assessment is not requested, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be:

(1) determined by the:

(A) person constructing or providing the infrastructure or improvement; and

(B) applicable infrastructure agency; and

(2) equal to the sum of the following:

(A) The cost of constructing or providing the infrastructure or improvement.

(B) The fair market value of land, real property interests, and site improvements provided.

(e) The amount of a credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (d). However, at the time the amount of a credit is determined under subsection (d), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

SECTION 38. IC 36-7-4-1401.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1401.5. (a) A legislative body may, in a zoning ordinance, designate zoning districts in which a development plan is required. If a zoning district is designated under this section, the plan commission must approve or disapprove a development plan under this series for real property within the zoning district.

(b) The plan commission has exclusive authority to approve or disapprove a development plan for real property located within the plan commission's jurisdiction.

(c) ~~Designation by the legislative body of a zoning district where a development plan is required is a legislative act, and is not subject to~~

C
o
p
y



review by certiorari under section 1016 of this chapter.

SECTION 39. IC 36-7-4-1402 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1402. (a) This section applies if a zoning district is designated in a zoning ordinance under section 1401.5(a) of this chapter.

(b) In the zoning ordinance, the legislative body adopting the ordinance must specify the following:

(1) Development requirements that must be satisfied before the plan commission may approve a development plan.

(2) Plan documentation and supporting information that must be supplied to the plan commission before the plan commission may approve a development plan.

(3) Development requirements for approval of a development plan that the plan commission may waive.

(4) Conditions under which the plan commission may waive development requirements for approval of a development plan.

(5) Procedures for submission and review of a development plan, including the nature or type of application, fees, notice, hearing, amendment, and other matters relevant to review.

(c) In the zoning ordinance, the legislative body may authorize the following to review and approve a development plan:

(1) The plan commission staff.

(2) A hearing ~~examiner~~ **officer** or committee of the plan commission designated under section 402(d) of this chapter.

SECTION 40. IC 36-7-4-1404 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1404. (a) If a zoning ordinance designates a zoning district under section 1401.5(a) of this chapter and authority is delegated under section 1402(c) of this chapter, the zoning ordinance must describe the following:

(1) The duties of the plan commission staff, hearing ~~examiner~~, **officer**, or committee in reviewing a development plan.

(2) The procedures for review of a development plan by the plan commission staff, hearing ~~examiner~~, **officer**, or committee.

(3) The procedures for an appeal to the plan commission of a decision made by the plan commission staff, hearing examiner, or committee.

(b) A plan commission staff, hearing ~~examiner~~, **officer**, or committee to which authority has been delegated under section 1402(c) of this chapter may make a decision concerning a development plan without a public hearing if the zoning ordinance provides for an appeal of the decision directly to the plan commission.

(c) The zoning ordinance may provide for a hearing procedure for

C
o
p
y



review of a development plan that is similar to the hearing procedure for review of subdivision plats under the 700 series of this chapter. If such a procedure is adopted, the zoning ordinance may provide that public notice and hearing are not required for secondary review of a development plan. If notice and hearing are not required for secondary review of a development plan, the primary approval or disapproval of a development plan is a final decision of the plan commission that may be reviewed only as provided in section 1016 of this chapter.

SECTION 41. IC 36-7-4-1405 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1405. (a) The plan commission shall review a development plan to determine if the development plan:

- (1) is consistent with the comprehensive plan; and
- (2) satisfies the development requirements specified in the zoning ordinance under sections 1402 and 1403 of this chapter.

(b) The plan commission may do the following:

- (1) Impose conditions on the approval of a development plan if the conditions are reasonably necessary to satisfy the development requirements specified in the zoning ordinance for approval of the development plan.

- (2) Provide that approval of a development plan is conditioned on the furnishing to the plan commission of a bond or written assurance that:

- (A) guarantees the timely completion of a proposed public improvement in the proposed development; and

- (B) is satisfactory to the plan commission.

- (3) Permit or require the owner of real property to make a written commitment under section ~~613~~ **1015** of this chapter.

SECTION 42. IC 36-7-4-1512 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1512. (a) When adopting or amending a PUD district ordinance, the legislative body of a unit may do the following:

- (1) Impose reasonable conditions on a proposed planned unit development.

- (2) Condition issuance of an improvement location permit on the furnishing of a bond or a satisfactorily written assurance guaranteeing the timely completion of a proposed public improvement in a planned unit development or serving a planned unit development.

- (3) Allow or require an owner of real property to make a written commitment in the manner authorized under section ~~614 or 615~~ **1015** of this chapter.

C
o
p
y



(b) When recommending adoption of a PUD district ordinance to the legislative body, granting an approval under section 1511 of this chapter, or making a modification under section 1511(b) of this chapter, the bodies or persons authorized under section 1511(c) of this chapter may:

- (1) impose the conditions described in subsection (a)(1) and (a)(2); and
- (2) allow or require a written commitment as authorized under section ~~614~~ or ~~615~~ **1015** of this chapter.

SECTION 43. IC 36-7-4-1600 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1600. This series (sections 1600 through 1699 of this chapter) may be cited as follows: 1600 SERIES. JUDICIAL REVIEW.**

SECTION 44. IC 36-7-4-1601 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1601. (a) This series establishes the exclusive means for judicial review of zoning decisions as described in section 1003 or 1016 of this chapter, made by a board of zoning appeals, legislative body, plan commission, preservation commission, or zoning administrator (referred to as the "board" in this series).**

(b) A legislative act is not subject to judicial review under this series.

SECTION 45. IC 36-7-4-1602 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1602. (a) Judicial review of a zoning decision is initiated by filing a petition for review in the appropriate court.**

(b) Only a person who qualifies under:

- (1) section 1603 of this chapter concerning standing;
- (2) section 1604 of this chapter concerning exhaustion of administrative remedies;
- (3) section 1605 of this chapter concerning the time for filing a petition for review; and
- (4) section 1613 of this chapter concerning the time for filing the board record for review;

is entitled to judicial review of a final zoning decision.

(c) A person is entitled to judicial review of a nonfinal zoning decision only if the person establishes both of the following:

- (1) Immediate and irreparable harm.
- (2) No adequate remedy exists at law. The failure of a person

C
o
p
y



1 to comply with the procedural requirements of this chapter
2 may not be the basis for a finding of an inadequate remedy at
3 law.

4 SECTION 46. IC 36-7-4-1603 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1603. (a) The following have**
7 **standing to obtain judicial review of a zoning decision:**

8 (1) A person to whom the decision is specifically directed.

9 (2) A person (other than staff) who participated in the board
10 hearing that led to the decision, either:

11 (A) by appearing at the hearing in person, by agent, or by
12 attorney and presenting relevant evidence; or

13 (B) by filing with the board a written statement setting
14 forth any facts or opinions relating to the decision.

15 (3) A person otherwise aggrieved or adversely affected by the
16 zoning decision.

17 (b) A person has standing under subsection (a)(3) only if:

18 (1) the zoning decision has prejudiced or is likely to prejudice
19 the interests of the person;

20 (2) the person was eligible for an initial notice of a hearing
21 under this chapter, was not notified of the hearing in
22 substantial compliance with this chapter, and did not have
23 actual notice of the hearing before the last date in the hearing
24 that the person could object or otherwise intervene to contest
25 the zoning decision;

26 (3) the person's asserted interests are among those that the
27 board was required to consider when it made the challenged
28 zoning decision; and

29 (4) a judgment in favor of the person would substantially
30 eliminate or redress the prejudice to the person caused or
31 likely to be caused by the zoning decision.

32 SECTION 47. IC 36-7-4-1604 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1604. (a) A person may file**
35 **a petition for judicial review under this chapter only after**
36 **exhausting all administrative remedies available within the board**
37 **whose zoning decision is being challenged.**

38 (b) A person who fails to timely object to a zoning decision or
39 timely petition for review of a zoning decision within the period
40 prescribed by this chapter waives the person's right to judicial
41 review under this chapter.

42 SECTION 48. IC 36-7-4-1605 IS ADDED TO THE INDIANA

C
o
p
y



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JANUARY 1, 2010]: **Sec. 1605.** A petition for review is timely only if the petition for review is filed not later than thirty (30) days after the date of the zoning decision that is the subject of the petition for judicial review.

SECTION 49. IC 36-7-4-1606 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1606.** (a) Venue is in the judicial district where the land affected by the zoning decision is located.

(b) If more than one (1) person may be aggrieved by the zoning decision, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who:

(1) was a petitioner or applicant at the hearing before the board; or

(2) entered a written appearance as an adverse party to the petitioner or applicant before the board hearing that led to the zoning decision, as described in section 920(h) of this chapter;

is a party to the petition for review.

(e) Any other person who participated, in the manner described in section 1603(a)(2) of this chapter, in the board hearing that led to the zoning decision may, not later than fourteen (14) days after the decision is made, file with the board a written request that the person receive notice of any petition for review that may be filed. The written request must include the person's full name and correct mailing address and a reference to the board's docket number relative to the zoning decision.

SECTION 50. IC 36-7-4-1607 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1607.** (a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

(1) The name and mailing address of the petitioner.

(2) The name and mailing address of the board whose zoning

C
o
p
y



1 decision is at issue.

2 (3) Identification of the decision at issue, together with a copy,
3 summary, or brief description of the decision.

4 (4) Identification of persons who participated in any hearing,
5 as described in section 1603(a)(2) of this chapter, that led to
6 the decision.

7 (5) Specific facts to demonstrate that the petitioner is entitled
8 to obtain judicial review under section 1602 of this chapter.

9 (6) Specific facts to demonstrate that the petitioner has been
10 prejudiced by one (1) or more of the grounds described in
11 section 1614 of this chapter.

12 (7) A request for relief, specifying the type and extent of relief
13 requested.

14 SECTION 51. IC 36-7-4-1608 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1608. (a)** A petitioner for
17 judicial review shall serve a copy of the petition upon the board
18 making the zoning decision in the manner provided by the rules of
19 procedure governing civil actions in the courts. Service on the
20 board must be made to the secretary, president, or chairperson of
21 the board.

22 (b) The petitioner shall use means provided by the rules of
23 procedure governing civil actions in the courts to give notice of the
24 petition for review:

25 (1) to all parties to the petition for review, as described in
26 section 1606(d) of this chapter; and

27 (2) to persons who, in the manner described in section 1606(e)
28 of this chapter, filed with the board making the zoning
29 decision written requests that they receive notice of any
30 petition for review, according to the public records of the
31 board. However, if the public records of the board show that
32 the board received written requests for notice from more than
33 three (3) persons, the petitioner shall give notice only to the
34 first three (3) persons who requested notice according to those
35 records. Notice to any additional persons who requested
36 notice is not required.

37 (c) This section does not require the petitioner to name the
38 persons who must be given notice under subsection (b)(2) as parties
39 to the petition for review.

40 SECTION 52. IC 36-7-4-1609 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1609. (a)** A person seeking

C
o
p
y



judicial review may seek, by filing a verified petition, an order of the court staying the zoning decision pending review by the court. The court may enter an order staying the zoning decision pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the zoning decision appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the zoning decision if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars (\$500).

(b) If a petition for review concerns a revocation or suspension of a previously approved variance, exception, or use, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the zoning decision is approved on final determination, the revocation or suspension of the variance, exception, or use immediately becomes effective.

SECTION 53. IC 36-7-4-1610 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1610. A person may obtain judicial review of an issue that was not raised before the board, only to the extent that:**

(1) the issue concerns whether a person who was required to be notified by this chapter or other law of a board hearing was notified in substantial compliance with this chapter or other law; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the zoning decision.

SECTION 54. IC 36-7-4-1611 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1611. Judicial review of disputed issues of fact must be confined to the board record for the zoning decision supplemented by additional evidence taken under section 1612 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the board.**

SECTION 55. IC 36-7-4-1612 IS ADDED TO THE INDIANA

C
o
p
y



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JANUARY 1, 2010]: **Sec. 1612. (a) The court may receive evidence, in addition to that contained in the board record for judicial review, only if the evidence relates to the validity of the zoning decision at the time the decision was made and is needed to decide disputed issues regarding one (1) or both of the following:**

(1) Improper constitution as a decisionmaking body or grounds for disqualification of those making the zoning decision.

(2) Unlawfulness of procedure or of decisionmaking process. This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the board proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the board before final disposition of a petition for review with directions that the board conduct further factfinding or that the board prepare an adequate record, if:

(1) the board failed to prepare or preserve an adequate record;

(2) the board improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the zoning decision and the court determines that the new provision of law may control the outcome.

SECTION 56. IC 36-7-4-1613 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1613. (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court, the petitioner shall transmit to the court the original or a certified copy of the board record for judicial review of the zoning decision, consisting of:**

(1) any board documents expressing the decision;

(2) other documents identified by the board as having been considered by the board before its decision and used as a basis for its decision; and

(3) any other material described in this chapter or other law as the board record for the type of zoning decision at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible board within the time permitted by

C
o
p
y



1 this section is good cause. Failure to file the record within the time
 2 permitted by this subsection, including any extension period
 3 ordered by the court, is cause for dismissal of the petition for
 4 review by the court, on its own motion, or on petition of any party
 5 of record to the proceeding.

6 (c) Upon a written request by the petitioner, the board making
 7 the zoning decision being reviewed shall prepare the board record
 8 for the petitioner. If part of the record has been preserved without
 9 a transcript, the board shall, if practicable, prepare a transcript
 10 for inclusion in the record transmitted to the court, except for
 11 parts that the parties to the judicial review proceeding stipulate to
 12 omit in accordance with subsection (e).

13 (d) Notwithstanding IC 5-14-3-8, the board shall charge the
 14 petitioner with the reasonable cost of preparing any necessary
 15 copies and transcripts for transmittal to the court, unless a person
 16 files with the court, under oath and in writing, the statement
 17 described by IC 33-37-3-2.

18 (e) By stipulation of all parties to the review proceedings, the
 19 record may be shortened, summarized, or organized.

20 (f) The court may tax the cost of preparing transcripts and
 21 copies for the record:

22 (1) against a party to the judicial review proceeding who
 23 unreasonably refuses to stipulate to shorten, summarize, or
 24 organize the record; or

25 (2) in accordance with the rules governing civil actions in the
 26 courts or other law.

27 (g) Additions to the record concerning evidence received under
 28 section 1612 of this chapter must be made as ordered by the court.
 29 The court may require or permit subsequent corrections or
 30 additions to the record.

31 SECTION 57. IC 36-7-4-1614 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1614. (a) The burden of**
 34 **demonstrating the invalidity of a zoning decision is on the party to**
 35 **the judicial review proceeding asserting invalidity.**

36 (b) The validity of a zoning decision shall be determined in
 37 accordance with the standards of review provided in this section,
 38 as applied to the decision at the time it was made.

39 (c) The court shall make findings of fact on each material issue
 40 on which the court's decision is based.

41 (d) The court shall grant relief under section 1615 of this
 42 chapter only if the court determines that a person seeking judicial

C
O
P
Y



relief has been prejudiced by a zoning decision that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

SECTION 58. IC 36-7-4-1615 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1615. If the court finds that a person has been prejudiced under section 1614 of this chapter, the court may set aside a zoning decision and:**

- (1) remand the case to the board for further proceedings; or
- (2) compel a decision that has been unreasonably delayed or unlawfully withheld.

SECTION 59. IC 36-7-4-1616 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1616. The court's decision on a petition for review of a zoning decision is appealable in accordance with the rules governing civil appeals from the courts.**

SECTION 60. IC 36-7-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 4. (a)** A unit may establish, by ordinance, a historic preservation commission with an official name designated in the ordinance. The commission must have not less than three (3) nor more than nine (9) voting members, as designated by the ordinance. The voting members shall be appointed by the executive of the unit, subject to the approval of the legislative body. Voting members shall each serve for a term of three (3) years. However, the terms of the original voting members may be for one (1) year, two (2) years, or three (3) years in order for the terms to be staggered, as provided by the ordinance. A vacancy shall be filled for the duration of the term. In the case of a commission with jurisdiction in a city having a population of more than one hundred five thousand (105,000) but less than one hundred twenty thousand (120,000), the commission must after June 30, 2001, include as a voting member the superintendent of the largest school corporation in the city.

(b) The ordinance may provide qualifications for members of the commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the

C
o
p
y



disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

(1) designate an officer or employee of the unit to act as administrator;

(2) permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or

(3) provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary, otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly, except when it has no business pending.

(h) A **final** decision of the commission is subject to judicial review under ~~IC 4-21.5-5~~ **IC 36-7-4** as if it ~~was~~ **were** a **final** decision of a ~~state agency~~ **board of zoning appeals**.

SECTION 61. IC 36-7-11.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 10. (a) If the commission determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the secretary of the commission shall forthwith issue to the applicant a certificate of appropriateness.

(b) The commission may impose any reasonable conditions, consistent with the historic preservation plan, upon the issuance of a certificate of appropriateness, including the requirement of executing and recording covenants or filing a maintenance or performance bond. If the commission determines that a certificate of appropriateness

C
o
p
y



1 should not be issued, the commission shall forthwith place upon its
 2 records the reasons for the determination and may include
 3 recommendations respecting the proposed construction, reconstruction,
 4 alteration, or demolition. The secretary of the commission shall
 5 forthwith notify the applicant of the determination transmitting to ~~him~~
 6 **the applicant** an attested copy of the reasons and recommendations, if
 7 any, of the commission.

8 (c) ~~Every~~ **A final** determination of the commission upon an
 9 application for certificate of appropriateness is subject to **judicial**
 10 review ~~by certiorari upon petition to the circuit or superior court of the~~
 11 ~~county by any aggrieved person;~~ in the same manner and subject to the
 12 same limitations as a **final** decision of a board of zoning appeals under
 13 IC 36-7-4. However, upon notice of the filing of the petition for writ of
 14 ~~certiorari;~~ **judicial review**, all proceedings and work on the subject
 15 premises are automatically stayed.

16 (d) ~~An appeal may be taken to the court of appeals of Indiana from~~
 17 ~~the final judgment of the court reversing; affirming; or modifying the~~
 18 ~~determination of the commission in the same manner and upon the~~
 19 ~~same terms, conditions, and limitations as appeals in other civil actions.~~

20 SECTION 62. IC 36-7-11.2-64 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 64. (a) A final
 22 determination by the commission is subject to judicial review ~~An~~
 23 interested party aggrieved by a determination may file with the circuit
 24 or superior court of Marion County a verified petition for writ of
 25 certiorari stating that the determination is illegal in whole or part. The
 26 petition must be filed not later than sixty (60) days after the date of the
 27 final determination. A change of venue is not permitted in a cause of
 28 action arising under this section: **in the same manner and subject to**
 29 **the same limitations as a final decision of a board of zoning appeals**
 30 **under IC 36-7-4.**

31 (b) Upon the filing of a petition for writ of certiorari the petitioner
 32 shall have a copy of the petition served upon each interested party in
 33 the manner provided in this chapter for service of notice. Upon
 34 adequate showing by the petitioner that a copy of the petition has been
 35 served, the circuit or superior court shall enter an order directing the
 36 commission to show cause not later than thirty (30) days from the entry
 37 of the order why a writ of certiorari should not issue. If the commission
 38 or an interested party appearing in support of the commission's
 39 determination fails to show to the satisfaction of the court that a writ
 40 should not issue, the court may allow a writ directed to the commission.
 41 The writ must prescribe the time in which a return shall be made to the
 42 court. The time:

C
o
p
y



(1) may not be less than twenty (20) days from the date of the issuance of the writ; and

(2) may be extended by the court on application and on notice to all parties;

(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed.

(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:

(1) reverse;

(2) affirm, wholly or in part; or

(3) modify;

the determination of the commission brought up for review. Costs may not be allowed against the commission.

(e) Upon the filing of a petition under this section, the final determination of the commission with respect to which the petition is filed is considered without force and effect pending a final judgment by the court. If the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.

SECTION 63. IC 36-7-11.3-59 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 59. (a) A final determination by the commission is subject to judicial review. An interested party aggrieved by a determination may file with the circuit or superior court of the county a verified petition for writ of certiorari stating that the determination is illegal in whole or part. The petition must be filed not later than sixty (60) days after the date of the final

C
o
p
y



determination. A change of venue is not permitted in a cause of action arising under this section: **in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4.**

(b) Upon the filing of a petition for writ of certiorari the petitioner shall have a copy of the petition served upon each interested party in the manner provided in this chapter for service of notice. Upon adequate showing by the petitioner that a copy of the petition has been served, the circuit or superior court shall enter an order directing the commission to show cause not later than thirty (30) days from the entry of the order why a writ of certiorari should not issue. If the commission or an interested party appearing in support of the commission's determination fails to show to the satisfaction of the court that a writ should not issue, the court may allow a writ directed to the commission. The writ must prescribe the time in which a return shall be made to the court. The time:

(1) may not be less than twenty (20) days from the date of the issuance of the writ; and

(2) may be extended by the court on application and on notice to all parties.

(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed.

(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:

(1) reverse;

(2) affirm, wholly or in part; or

(3) modify;

C
o
p
y



the determination of the commission brought up for review. Costs may not be allowed against the commission.

(e) Upon the filing of a petition under this section, the final determination of the commission with respect to which petition is filed is considered without force and effect pending a final judgment by the court. If the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.

SECTION 64. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2010]: IC 36-7-3-11; IC 36-7-4-613; IC 36-7-4-614; IC 36-7-4-615; IC 36-7-4-921; IC 36-7-4-1005; IC 36-7-4-1006; IC 36-7-4-1007; IC 36-7-4-1008; IC 36-7-4-1009; IC 36-7-4-1010; IC 36-7-4-1011.

SECTION 65. [EFFECTIVE JULY 1, 2009] (a) As used in this SECTION, "local governmental agency" has the meaning set forth in IC 36-7-4-1109.

(b) As used in this SECTION, "permit" has the meaning set forth in IC 36-7-4-1109.

(c) If before January 1, 2010, a person files a complete application as required by the effective ordinances or rules of a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed through December 31, 2011, by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, notwithstanding the statutory changes made by this act.

(d) Subsection (e) applies if:

(1) before January 1, 2010, either:

(A) a local governmental agency issues to a person a permit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a permit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a permit or approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the permit or requested the

**C
O
P
Y**



1 approval for the construction of the development, building, or
 2 structure from the state governmental agency within ninety
 3 (90) days of issuance of the permit by the local governmental
 4 agency.

5 (e) Subject to subsection (f), if the conditions of subsection (d)
 6 are satisfied:

7 (1) a permit or approval issued or granted to a person by the
 8 local governmental agency for the construction of the
 9 development, building, or structure; or

10 (2) the person's right to construct the development, building,
 11 or structure without a permit or approval from the local
 12 governmental agency;

13 is governed through December 31, 2011, by the statutes,
 14 ordinances, rules, development standards, regulations, and
 15 approvals in effect and applicable to the property when the person
 16 applies for the permit or requests approval from the state
 17 governmental agency for the construction of the development,
 18 building, or structure, notwithstanding the statutory changes made
 19 by this act.

20 (f) Subsection (d) does not apply to property when it is
 21 demonstrated by the local or state governmental agency that the
 22 construction of the development, building, or structure would
 23 cause imminent peril to life or property.

24 (g) This SECTION does not apply to building codes under
 25 IC 22-13.

26 (h) This SECTION is supplemental to IC 36-7-4-1109.

27 (i) This SECTION expires December 31, 2012.

C
O
P
Y

